Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1823

L. B. MCFARLAND,
Petitioner,

v.

STATE OF GEORGIA,
Respondent,

Petition for a Writ of Certiorari to the Georgia Court of Appeals

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

INTRODUCTION

The Attorney General's Brief for the Respondent in Opposition states at page 4:

> "The Georgia Supreme Court saw that Petitioner's enumeration was *patently frivolous* and denied certiorari." [emphasis added].

The basis therefor, the State says, is the Opinion of the Court of Appeals, in which the underlying affi-

davit, submitted in support of the application for the search warrant contained "a lengthy eight-page chronicle summarizing approximately three weeks of G.B.I. surveillance of the Lowndes County Country Club." Brief, pp. 3-4.

ARGUMENT

To begin with, there is no way of knowing why the Supreme Court of the State of Georgia denied certiorari, since it rendered no opinion.

Second, the Georgia Court of Appeals' reliance on the underlying affidavit's length was misplaced. The three-week surveillance was not of the Lowndes County Country Club, but rather of two individuals, neither of whom was ever in any way connected with the Petitioner McFarland. Such surveillance as was conducted at the Lowndes County Country Club revealed absolutely nothing of any criminal conduct on the part of the Petitioner McFarland.

In these circumstances, this Court's duty was laid down in *Ker* v. *California*, 374 U.S. 23 (1963).

> "While this Court does not sit as a nisi prius to appraise contradictory factual questions, it will, where necessary to the determination of constitutional rights, make an independent examination of the facts, the findings, and the record so that it can determine for itself whether in the decision as to reasonableness the fundamental—i.e., constitutional—criteria established by this Court have been respected."

CONCLUSION

Not only was the Petition for Certiorari not "patently frivolous," an independent examination by this Court of the facts, the findings, and the record

will conclusively demonstrate that constitutional criteria established by this Court in *Spinelli* v. *United States,* 394 U.S. 410 (1969) were completely ignored by the Court of Appeals of the State of Georgia.

Respectfully submitted,

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Certificate of Service

This is to certify that a true and correct copy of the foregoing Petitioner's Reply Brief was mailed to the following:

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with sufficient postage thereon to insure delivery by first class mail.

This 9th day of August, 1976.

/s/ BERNARD H. DEMPSEY, JR.
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